

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

No. 16

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Introduced by Assembly Member Swanson

December 1, 2008

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An act to amend Sections 667.1, 667.5, and 1192.7 of, and to add Section 647.5 to, the Penal Code, relating to ~~sex crimes~~ *human trafficking*, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 16, as amended, Swanson. ~~Sex crimes: minor victims: punishment.~~ *Human trafficking.*

Under existing law, any person who solicits or who agrees to engage in or who engages in any act of prostitution is guilty of a misdemeanor.

This bill would make it a felony for any person to solicit another person who is under 18 years of age to engage in an act of prostitution in return for money or other consideration or to agree to give another person who is under 18 years of age money or other consideration in return for the other person committing an act of prostitution. Because this bill would increase the punishment for an existing crime, it would impose a state-mandated local program.

Under existing law, including the Three Strikes Law, a person who is convicted of or who has a prior conviction for a serious or violent felony, is subject to additional years of imprisonment in the state prison, as specified.

This bill would include within the definition of a serious and a violent felony the crimes of soliciting or agreeing to engage in an act of prostitution with a person under 18 years of age, pimping a minor, pandering a minor, and procuring a minor *crime of human trafficking*.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 Human ~~trafficking~~ *Trafficking* Penalties Act.

3 ~~SEC. 2. Section 647.5 is added to the Penal Code, to read:~~

4 ~~647.5. Any person who solicits another person who is under~~  
5 ~~18 years of age to engage in an act of prostitution in return for~~  
6 ~~money or other consideration or who agrees to give another person~~  
7 ~~who is under 18 years of age money or other consideration in return~~  
8 ~~for the other person committing an act of prostitution is guilty of~~  
9 ~~a felony. As used in this section, "prostitution" includes any lewd~~  
10 ~~act between persons for money or other consideration.~~

11 ~~SEC. 3.~~

12 SEC. 2. Section 667.1 of the Penal Code is amended to read:

13 667.1. Notwithstanding subdivision (h) of Section 667, for all  
14 offenses committed on or after the effective date of this act, all  
15 references to existing statutes in subdivisions (c) to (g), inclusive,  
16 of Section 667, are to those statutes as they existed on the effective  
17 date of this act, including amendments made to those statutes by  
18 any act enacted during ~~or prior to~~ the 2009–10 Regular Session  
19 that amended this section.

20 ~~SEC. 4.~~

21 SEC. 3. Section 667.5 of the Penal Code is amended to read:

22 667.5. Enhancement of prison terms for new offenses because  
23 of prior prison terms shall be imposed as follows:

24 (a) Where one of the new offenses is one of the violent felonies  
25 specified in subdivision (c), in addition to and consecutive to any  
26 other prison terms therefor, the court shall impose a three-year  
27 term for each prior separate prison term served by the defendant  
28 where the prior offense was one of the violent felonies specified

1 in subdivision (c). However, no additional term shall be imposed  
2 under this subdivision for any prison term served prior to a period  
3 of 10 years in which the defendant remained free of both prison  
4 custody and the commission of an offense which results in a felony  
5 conviction.

6 (b) Except where subdivision (a) applies, where the new offense  
7 is any felony for which a prison sentence is imposed, in addition  
8 and consecutive to any other prison terms therefor, the court shall  
9 impose a one-year term for each prior separate prison term served  
10 for any felony; provided that no additional term shall be imposed  
11 under this subdivision for any prison term served prior to a period  
12 of five years in which the defendant remained free of both prison  
13 custody and the commission of an offense which results in a felony  
14 conviction.

15 (c) For the purpose of this section, “violent felony” shall mean  
16 any of the following:

17 (1) Murder or voluntary manslaughter.

18 (2) Mayhem.

19 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
20 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
21 262.

22 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

23 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
24 288a.

25 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
26 of Section 288.

27 (7) Any felony punishable by death or imprisonment in the state  
28 prison for life.

29 (8) Any felony in which the defendant inflicts great bodily injury  
30 on any person other than an accomplice which has been charged  
31 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
32 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
33 Sections 213, 264, and 461, or any felony in which the defendant  
34 uses a firearm which use has been charged and proved as provided  
35 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
36 12022.55.

37 (9) Any robbery.

38 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

39 (11) Sexual penetration as defined in subdivision (a) or (j) of  
40 Section 289.

- 1 (12) Attempted murder.
- 2 (13) A violation of Section 12308, 12309, or 12310.
- 3 (14) Kidnapping.
- 4 (15) Assault with the intent to commit a specified felony, in
- 5 violation of Section 220.
- 6 (16) Continuous sexual abuse of a child, in violation of Section
- 7 288.5.
- 8 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 9 (18) Rape, spousal rape, or sexual penetration, in concert, in
- 10 violation of Section 264.1.
- 11 (19) Extortion, as defined in Section 518, which would constitute
- 12 a felony violation of Section 186.22 of the Penal Code.
- 13 (20) Threats to victims or witnesses, as defined in Section 136.1,
- 14 which would constitute a felony violation of Section 186.22 of the
- 15 Penal Code.
- 16 (21) Any burglary of the first degree, as defined in subdivision
- 17 (a) of Section 460, wherein it is charged and proved that another
- 18 person, other than an accomplice, was present in the residence
- 19 during the commission of the burglary.
- 20 (22) Any violation of Section 12022.53.
- 21 (23) A violation of subdivision (b) or (c) of Section 11418. The
- 22 Legislature finds and declares that these specified crimes merit
- 23 special consideration when imposing a sentence to display society's
- 24 condemnation for these extraordinary crimes of violence against
- 25 the person.
- 26 ~~(24) Any violation of subdivision (b) of Section 266h,~~
- 27 ~~subdivision (b) of Section 266i, Section 266j, or Section 647.5.~~
- 28 (24) *Any violation of Section 236.1.*
- 29 (d) For the purposes of this section, the defendant shall be
- 30 deemed to remain in prison custody for an offense until the official
- 31 discharge from custody or until release on parole, whichever first
- 32 occurs, including any time during which the defendant remains
- 33 subject to reimprisonment for escape from custody or is
- 34 reimprisoned on revocation of parole. The additional penalties
- 35 provided for prior prison terms shall not be imposed unless they
- 36 are charged and admitted or found true in the action for the new
- 37 offense.
- 38 (e) The additional penalties provided for prior prison terms shall
- 39 not be imposed for any felony for which the defendant did not
- 40 serve a prior separate term in state prison.

1 (f) A prior conviction of a felony shall include a conviction in  
2 another jurisdiction for an offense which, if committed in  
3 California, is punishable by imprisonment in the state prison if the  
4 defendant served one year or more in prison for the offense in the  
5 other jurisdiction. A prior conviction of a particular felony shall  
6 include a conviction in another jurisdiction for an offense which  
7 includes all of the elements of the particular felony as defined  
8 under California law if the defendant served one year or more in  
9 prison for the offense in the other jurisdiction.

10 (g) A prior separate prison term for the purposes of this section  
11 shall mean a continuous completed period of prison incarceration  
12 imposed for the particular offense alone or in combination with  
13 concurrent or consecutive sentences for other crimes, including  
14 any reimprisonment on revocation of parole which is not  
15 accompanied by a new commitment to prison, and including any  
16 reimprisonment after an escape from incarceration.

17 (h) Serving a prison term includes any confinement time in any  
18 state prison or federal penal institution as punishment for  
19 commission of an offense, including confinement in a hospital or  
20 other institution or facility credited as service of prison time in the  
21 jurisdiction of the confinement.

22 (i) For the purposes of this section, a commitment to the State  
23 Department of Mental Health as a mentally disordered sex offender  
24 following a conviction of a felony, which commitment exceeds  
25 one year in duration, shall be deemed a prior prison term.

26 (j) For the purposes of this section, when a person subject to  
27 the custody, control, and discipline of the Director of Corrections  
28 is incarcerated at a facility operated by the Department of the Youth  
29 Authority, that incarceration shall be deemed to be a term served  
30 in state prison.

31 (k) Notwithstanding subdivisions (d) and (g) or any other  
32 provision of law, where one of the new offenses is committed  
33 while the defendant is temporarily removed from prison pursuant  
34 to Section 2690 or while the defendant is transferred to a  
35 community facility pursuant to Section 3416, 6253, or 6263, or  
36 while the defendant is on furlough pursuant to Section 6254, the  
37 defendant shall be subject to the full enhancements provided for  
38 in this section.

1 This subdivision shall not apply when a full, separate, and  
2 consecutive term is imposed pursuant to any other provision of  
3 law.

4 ~~SEC. 5.~~

5 *SEC. 4.* Section 1192.7 of the Penal Code is amended to read:

6 1192.7. (a) (1) It is the intent of the Legislature that district  
7 attorneys prosecute violent sex crimes under statutes that provide  
8 sentencing under a “one strike,” “three strikes” or habitual sex  
9 offender statute instead of engaging in plea bargaining over those  
10 offenses.

11 (2) Plea bargaining in any case in which the indictment or  
12 information charges any serious felony, any felony in which it is  
13 alleged that a firearm was personally used by the defendant, or  
14 any offense of driving while under the influence of alcohol, drugs,  
15 narcotics, or any other intoxicating substance, or any combination  
16 thereof, is prohibited, unless there is insufficient evidence to prove  
17 the people’s case, or testimony of a material witness cannot be  
18 obtained, or a reduction or dismissal would not result in a  
19 substantial change in sentence.

20 (3) If the indictment or information charges the defendant with  
21 a violent sex crime, as listed in subdivision (c) of Section 667.61,  
22 that could be prosecuted under Sections 269, 288.7, subdivisions  
23 (b) through (i) of Section 667, Section 667.61, or 667.71, plea  
24 bargaining is prohibited unless there is insufficient evidence to  
25 prove the people’s case, or testimony of a material witness cannot  
26 be obtained, or a reduction or dismissal would not result in a  
27 substantial change in sentence. At the time of presenting the  
28 agreement to the court, the district attorney shall state on the record  
29 why a sentence under one of those sections was not sought.

30 (b) As used in this section “plea bargaining” means any  
31 bargaining, negotiation, or discussion between a criminal  
32 defendant, or his or her counsel, and a prosecuting attorney or  
33 judge, whereby the defendant agrees to plead guilty or nolo  
34 contendere, in exchange for any promises, commitments,  
35 concessions, assurances, or consideration by the prosecuting  
36 attorney or judge relating to any charge against the defendant or  
37 to the sentencing of the defendant.

38 (c) As used in this section, “serious felony” means any of the  
39 following:

1 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;  
2 (4) sodomy by force, violence, duress, menace, threat of great  
3 bodily injury, or fear of immediate and unlawful bodily injury on  
4 the victim or another person; (5) oral copulation by force, violence,  
5 duress, menace, threat of great bodily injury, or fear of immediate  
6 and unlawful bodily injury on the victim or another person; (6)  
7 lewd or lascivious act on a child under 14 years of age; (7) any  
8 felony punishable by death or imprisonment in the state prison for  
9 life; (8) any felony in which the defendant personally inflicts great  
10 bodily injury on any person, other than an accomplice, or any  
11 felony in which the defendant personally uses a firearm; (9)  
12 attempted murder; (10) assault with intent to commit rape or  
13 robbery; (11) assault with a deadly weapon or instrument on a  
14 peace officer; (12) assault by a life prisoner on a noninmate; (13)  
15 assault with a deadly weapon by an inmate; (14) arson; (15)  
16 exploding a destructive device or any explosive with intent to  
17 injure; (16) exploding a destructive device or any explosive causing  
18 bodily injury, great bodily injury, or mayhem; (17) exploding a  
19 destructive device or any explosive with intent to murder; (18) any  
20 burglary of the first degree; (19) robbery or bank robbery; (20)  
21 kidnapping; (21) holding of a hostage by a person confined in a  
22 state prison; (22) attempt to commit a felony punishable by death  
23 or imprisonment in the state prison for life; (23) any felony in  
24 which the defendant personally used a dangerous or deadly weapon;  
25 (24) selling, furnishing, administering, giving, or offering to sell,  
26 furnish, administer, or give to a minor any heroin, cocaine,  
27 phencyclidine (PCP), or any methamphetamine-related drug, as  
28 described in paragraph (2) of subdivision (d) of Section 11055 of  
29 the Health and Safety Code, or any of the precursors of  
30 methamphetamines, as described in subparagraph (A) of paragraph  
31 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section  
32 11100 of the Health and Safety Code; (25) any violation of  
33 subdivision (a) of Section 289 where the act is accomplished  
34 against the victim's will by force, violence, duress, menace, or  
35 fear of immediate and unlawful bodily injury on the victim or  
36 another person; (26) grand theft involving a firearm; (27)  
37 carjacking; (28) any felony offense, which would also constitute  
38 a felony violation of Section 186.22; (29) assault with the intent  
39 to commit mayhem, rape, sodomy, or oral copulation, in violation  
40 of Section 220; (30) throwing acid or flammable substances, in

1 violation of Section 244; (31) assault with a deadly weapon,  
2 firearm, machinegun, assault weapon, or semiautomatic firearm  
3 or assault on a peace officer or firefighter, in violation of Section  
4 245; (32) assault with a deadly weapon against a public transit  
5 employee, custodial officer, or school employee, in violation of  
6 Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an  
7 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;  
8 (34) commission of rape or sexual penetration in concert with  
9 another person, in violation of Section 264.1; (35) continuous  
10 sexual abuse of a child, in violation of Section 288.5; (36) shooting  
11 from a vehicle, in violation of subdivision (c) or (d) of Section  
12 12034; (37) intimidation of victims or witnesses, in violation of  
13 Section 136.1; (38) criminal threats, in violation of Section 422;  
14 (39) any attempt to commit a crime listed in this subdivision other  
15 than an assault; (40) any violation of Section 12022.53; (41) a  
16 violation of subdivision (b) or (c) of Section 11418; (42) any  
17 ~~violation of subdivision (b) of Section 266h, subdivision (b) of~~  
18 ~~Section 266i, Section 266j, or Section 647.5~~ *violation of Section*  
19 *236.1*; and (43) any conspiracy to commit an offense described in  
20 this subdivision.

21 (d) As used in this section, “bank robbery” means to take or  
22 attempt to take, by force or violence, or by intimidation from the  
23 person or presence of another any property or money or any other  
24 thing of value belonging to, or in the care, custody, control,  
25 management, or possession of, any bank, credit union, or any  
26 savings and loan association.

27 As used in this subdivision, the following terms have the  
28 following meanings:

29 (1) “Bank” means any member of the Federal Reserve System,  
30 and any bank, banking association, trust company, savings bank,  
31 or other banking institution organized or operating under the laws  
32 of the United States, and any bank the deposits of which are insured  
33 by the Federal Deposit Insurance Corporation.

34 (2) “Savings and loan association” means any federal savings  
35 and loan association and any “insured institution” as defined in  
36 Section 401 of the National Housing Act, as amended, and any  
37 federal credit union as defined in Section 2 of the Federal Credit  
38 Union Act.



1 (3) “Credit union” means any federal credit union and any  
2 state-chartered credit union the accounts of which are insured by  
3 the Administrator of the National Credit Union administration.

4 (e) The provisions of this section shall not be amended by the  
5 Legislature except by statute passed in each house by rollcall vote  
6 entered in the journal, two-thirds of the membership concurring,  
7 or by a statute that becomes effective only when approved by the  
8 electors.

9 ~~SEC. 6.~~

10 *SEC. 5.* No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.

19 ~~SEC. 7.~~

20 *SEC. 6.* This act is an urgency statute necessary for the  
21 immediate preservation of the public peace, health, or safety within  
22 the meaning of Article IV of the Constitution and shall go into  
23 immediate effect. The facts constituting the necessity are:

24 In order to protect minors in California from current and ongoing  
25 crimes involving sexual exploitation it is necessary that this  
26 legislation take effect immediately.